

In Re: June C. Long
CH. 7 No. 03-65260
Adversary 03-9230

Hazel Gantt Lockley, Plaintiff v. June C. Long, Defendant

On April 10, 2003, Debtor June C. Long (“Defendant”) voluntarily filed for relief under Chapter 7 of the Bankruptcy Code. On July 14, 2003, Plaintiff Hazel Gantt Lockley (“Plaintiff”) filed this adversary proceeding pursuant to 11 U.S.C. § 523(a)(4) to prevent the discharge of a state court judgment awarded in the Probate Court of Fulton County on January 26, 2001, in favor of Plaintiff against Defendant. Before this Court is the motion of Plaintiff for summary judgment seeking a determination that an amount of \$47,415.14 plus 12% interest from the date of the state court judgment is nondischargeable. Defendant filed a response in which she stated she admits the allegations in Plaintiff’s Motion for Summary Judgment, but disputes the amounts she owes Plaintiff. Defendant argues that Plaintiff’s motion should be denied, and requests that a hearing be held on the exact amount owed Plaintiff. For the following reasons set forth below, Plaintiff’s motion for summary judgment should be granted.

In accordance with Federal Rule of Bankruptcy Procedure 7056, which incorporates Federal Rule of Civil Procedure 56, summary judgment is only available in the absence of any genuine issue of material fact so as to make the moving party entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). The court will view the entire record in the light most favorable to the party against whom summary judgment is sought. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). “There is no

issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-250 (1986). If the evidence presented by the non moving party is merely colorable, or is not sufficient or significantly probative, summary judgment may be granted. *Id.*; see also *Dombrowski v. Eastland*, 387 U.S. 82, 87 S.Ct. 1425, 18 L.Ed.2d 577 (1967) (*per curiam*). That this is the proper focus of the inquiry is strongly suggested by the Rule itself. *Id.* Rule 56(e) provides that, when a properly supported motion for summary judgment is made, the adverse party "must set forth specific facts showing that there is a genuine issue for trial." *Id.* Rule 56(c) provides that the trial judge shall then grant summary judgment if there is no genuine issue as to any material fact and if the moving party is entitled to judgment as a matter of law. There is no requirement that the trial judge make findings of fact. *Id.*

Defendant admits to the allegations set forth in Plaintiff’s Motion for Summary Judgment. Defendant, however, argues that certain payments of the amount owed Plaintiff have already been made to Plaintiff, and objects only to the exact amount owed Plaintiff and the interest rate to be used on the amount owed. Defendant claims that since January 26, 2001, “substantial payments” have been to Plaintiff. On June 20, 2001, Defendant claims that a check was made payable to Plaintiff in the amount of \$22,344.93, of which \$21,743.39 was credited to the amount owed Plaintiff by Defendant. Defendant also alleges that on November 14, 2002, Traveler’s Bond, the surety for Defendant, tendered a check to Plaintiff’s counsel in the amount of \$27,755.84 to be credited towards

the amount Defendant owed Plaintiff. Defendant, however, asserts these claims without presenting any evidence showing proof of payment. Defendant and Defendant's counsel have had sufficient time to gather proof in the forms of either affidavits or copies of the checks tendered evidencing payments made to Plaintiff. They have not done so. As a result, they have failed in meeting the burden of showing that a genuine issue of fact exists to survive summary judgment. Plaintiff is entitled summary judgment as a matter of law. As such, it is hereby

ORDERED that Plaintiff Hazel Gantt Lockley's motion for summary judgment is granted.

It is so ORDERED, this the ____ day of July, 2004.